IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO. 41 OF 2006
IN
NOTICE OF MOTION NO.3029 OF 2004
IN
SUMMARY SUIT NO.3768 OF 2002

Central Warehousing Corporation ... Appellant

v/s.

Kaumudi P. Kothari and another .. Respondent

Ms.S.I.Shah i/by M/s.S.I.Shah & Co. for the appellant.

CORAM : R.M. LODHA AND
ANOOP V.MOHTA, JJ.
DATED : 2ND FEBRUARY, 2006.

P.C.

Heard.

2. It is apparent from the order dated 22nd September, 2004 that the present appellant (original defendant) has waived their right of referring the dispute to the arbitration. It is true that against the order dated 22nd September, 2004, the appeal has been admitted but the pendency of appeal does not mean that the fact recorded in the order dated 22nd September, 2004 that the defendant has waived their right of referring the dispute to the arbitration is upturned. In this backdrop, the notice of motion taken out by the appellant under section 8 of the Arbitration and Conciliation Act, 1996 was misconceived and the learned Motion Judge cannot be said to have erred in dismissing the notice of motion.

The appeal is dismissed in limine.

(R.M.LODHA, J.)

(ANOOP V. MOHTA, J.)